

MEMORANDUM FOR: Executive Secretary
Information Review Committee

FROM:

Chief, Information and Privacy Division, ISS

SUBJECT: Historical Researchers

1. Action Requested:

The Agency has been somewhat inconsistent in its handling of requests from historical researchers for access to classified information. It is requested that this matter be brought to the attention of the Information Review Committee at the earliest opportunity, for discussion and policy guidance.

2. Background:

a. Reference Material

Three documents are attached for your information. Tab A is an excerpt from Executive Order 12065 concerning historical researchers. Tab B is that portion of the Agency's rules and regulations implementing the Executive order's provisions for access by historical researchers. Tab C, a memorandum for the record, describes the Agency's experience thus far in dealing with these requests.

b. Pros and Cons

A liberal policy with respect to such applications would presumably further the public's knowledge of and appreciation for the important role played by the CIA in national security and foreign affairs. There would be several disadvantages however. For one thing, it would further tax our limited resources: background security investigations would be required; permanent facilities would have to be established to accommodate researchers; personnel would have to be assigned to perform escort duties and to monitor the researchers; searches for records pertinent to the research topics would have to be conducted; the researchers' notes would have to be reviewed; ad inf. Admitting individuals who are not fully cleared to Agency buildings for prolonged periods could be considered a

security hazard. If, as is conceivable, we found it necessary to withhold much of the information sought by approved researchers, we might end up expending our resources with no benefit to the general public accruing, and, at the same time, alienating the researchers. Finally, charges of favoritism from any applicants who are turned down could be anticipated.

c. Alternatives

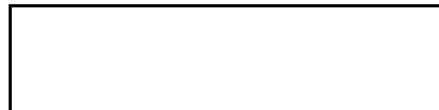
(1) We could adopt a liberal policy and attempt to accommodate all researchers who meet the basic criteria established in our regulations.

(2) We could modify our regulations by inserting a new paragraph, following (a) and preceding what is now (b), to the effect that it is the policy of the Agency to approve applications for historical research privileges only in those rare instances where the researcher's needs could not be satisfied through Freedom of Information or mandatory classification review requests. (This would result in virtually all applications being denied.)

(3) We could implement alternative (2), above, but follow a liberal policy with respect to requests from researchers for access to classified CIA records contained in the files of other agencies. The latter type of request would not be overly burdensome. We would still have to run security checks and review the researchers' notes, but the agency holding the records would be responsible for the retrieval of information, provision of working space, arranging for security reviews, etc.

3. Recommendation

It is recommended that the second alternative be adopted and that the Agency's rules and regulations be appropriately amended.



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Attachments: Tabs A, B & C

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THE PRESIDENT

grams may be created or continued only by written direction and only by those agency heads and, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Classified information in such programs shall be declassified according to the provisions of Section 3.

4-202. Special access programs may be created or continued only on a specific showing that:

(a) normal management and safeguarding procedures are not sufficient to limit need-to-know or access;

(b) the number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved; and

(c) the special access controls balance the need to protect the information against the full spectrum of needs to use the information.

4-203. All special access programs shall be reviewed regularly and, except those required by treaty or international agreement, shall terminate automatically every five years unless renewed in accordance with the procedures in Section 4-2.

4-204. Within 180 days after the effective date of this Order, agency heads shall review all existing special access programs under their jurisdiction and continue them only in accordance with the procedures in Section 4-2. Each of those agency heads shall also establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office shall have non-delegable access to all such accountings.

4-3. Access by Historical Researchers and Former Presidential Appointees.

4-301. The requirement in Section 4-101 that access to classified information may be granted only as is necessary for the performance of official duties may be waived as provided in Section 4-302 for persons who:

(a) are engaged in historical research projects, or

(b) previously have occupied policy-making positions to which they were appointed by the President.

4-302. Waivers under Section 4-301 may be granted only if the agency with jurisdiction over the information:

(a) makes a written determination that access is consistent with the interests of national security;

(b) takes appropriate steps to ensure that access is limited to specific categories of information over which that agency has classification jurisdiction;

(c) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee.

4-4. Reproduction Controls.

4-401. Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office.

4-402. Reproduction of Secret and Confidential documents may be restricted by the originating agency.

4-403. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

4-404. Records shall be maintained by all agencies that reproduce paper copies of classified documents to show the number and distribution of reproduced copies of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and all Confidential documents which are marked with special dissemination and reproduction limitations in accordance with Section 1-506.

4-405. Sections 4-401 and 4-402 shall not restrict the reproduction of documents for the purpose of facilitating review for declassification. However,

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with the Freedom of Information Act, Executive Order 11652 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions of such records as it deems appropriate in accordance with Executive Order 11652.

(3) Committee action on appeals shall be completed within twenty work days of receipt of the appeal, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under that paragraph. In the event the Committee is unable to complete its review of an appeal within the time prescribed by the two preceding sentences it may, by agreement with the requester, extend the period for completion of such review.

(4) The Committee shall promptly inform the requester of its decisions and, with respect to any decision to withhold or deny records, it shall furnish the names and titles or positions of the persons responsible for the decision. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

§ 1900.53 Appeal to Interagency Classification Review Committee.

In the case of any refusal to declassify records which are at least ten years old, the Committee also shall inform the requester of his right to appeal that denial to the Interagency Classification Review Committee established pursuant to section 7(A) of Executive Order 11652, as provided by section IX(D) of the National Security Council Directive of May 1972. In that event, the Committee shall also inform the requester that appeal to the Interagency Classification Review Committee shall not waive his right to judicial review as provided by subsection (a)(4) of the Act.

MISCELLANEOUS

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive order for purposes of that research project may submit a request, the nature, purpose and scope of the research project.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such request and only upon the prior written

approval by the Agency Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with Executive Order 10450, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort;

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive Order 11652 and the National Security Council Directive of May 1972; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project, as the Coordinator may determine, but in no event for more than two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the Agency administration of Executive Order 11652 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

This regulation shall become effective on February 19, 1975.

JOHN F. BLAKE,
Deputy Director for Administration,
Central Intelligence Agency.

FEBRUARY 11, 1975.

[FR Doc. 75-4254 Filed 2-18-75; 8:45 am]

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1608—PUBLIC INFORMATION

Freedom of Information Act Regulations

Whereas, on January 14, 1975, the Director of Selective Service published a

Notice of Proposed Amendments to Selective Service Regulations (40 FR 2593) of January 14, 1975; and

Whereas more than thirty days have elapsed subsequent to such publication during which period comments from the public have been received and considered. The proposed amendments are being made effective without change in substance.

The revision of Part 1608 would eliminate the authority of the Director of Selective Service and the State Director of Selective Service to disclose information in a registrant's file to an official of any state or subdivision thereof and the authority of the Director of Selective Service to disclose information in a registrant's file to any person other than the officials listed; the addresses of State Directors of Selective Service would be eliminated; a charge for the search of records would be specifically prohibited; "not clearly authorized" disclosures of information could be made only upon advice of the General Counsel of the Selective Service System; and final agency action on an appeal from a denial of information would be taken by the Director of Selective Service. The present provisions of Part 1608 that are not changed in substance are rearranged for the purposes of increased clarity and convenience in use.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and § 1604.1 of Selective Service Regulations (32 CFR 1604.1), the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective February 19, 1975.

Part 1603, Public Information is revised to read as follows:

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| Sec. | |
| 1608.1 | Public information policy. |
| 1608.2 | Definitions. |
| 1608.3 | General policy on disclosure of information. |
| 1608.4 | Availability and use of information in registrants' files. |
| 1608.5 | Waiver of confidential nature of information in registrant's file. |
| 1608.6 | Subpoena of records. |
| 1608.7 | Available information. |
| 1608.8 | Places where information may be obtained. |
| 1608.9 | Rules governing the obtaining of information. |
| 1608.10 | Identification of information requested. |
| 1608.11 | Fees for search of records and copies of documents. |
| 1608.12 | Request for information not authorized to be disclosed. |
| 1608.13 | Review of denials of requests for information. |
| 1608.14 | Demands of courts or other authorities for records or information protected by these regulations. |

This amendment resulted from the IRC endorsing alternative 2 of the action memo.

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.
ACTION: Final rule.

SUMMARY: The Central Intelligence Agency (CIA) amends its regulations relating to public access to documents and records by clarifying policies and procedures regarding historical research requests. Based upon the Agency's experience in handling requests from historical researchers for access to classified information held in the file systems, a modification of the regulation is necessary. The amendment will allow the CIA to process such requests with less burden upon its limited resources. This document also corrects the text by setting forth language which was inadvertently omitted when first promulgated.

EFFECTIVE DATE: July 18, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Savige, Phone: (703) 351-5650.

SUPPLEMENTARY INFORMATION: This final rule was promulgated as a proposed rule on May 6, 1980, and comments were invited. On May 21, 1980, this Agency received a memorandum from the Director, Information Security Oversight Office, recommending the deletion of the word "rare" in line 11 of the promulgation. This recommendation has been accepted and the word is deleted. There were no other comments received.

In consideration of the foregoing, Part 1900, Chapter XIX of Title 32, Code of Federal Regulations, is amended by revising paragraph (a) of 1900.61 to read as follows:

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records.

This amendment to the rules and regulations of the Central Intelligence Agency is adopted under the authority of Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Executive Order 12065 (3CFR, 1978 Comp., p. 190), the Freedom of Information Act, as amended (5 U.S.C. 552), and the Federal Records Management Amendments of 1978 (Sec. 4, Pub. L. 94-575, 90 Stat. 2723).

Don L. Wortman,

Deputy Director for Administration.

(FR Doc. 80-21701 Filed 7-17-80; 8:45 am)

BILLING CODE 5210-02-01

4 DEC 1979

MEMORANDUM FOR THE RECORD

SUBJECT: Historical Research Applications

STAT 1. The first such application received by the Agency under E.O. 11652 was from [redacted], a former OSS officer who headed an OSS mission in Hanoi during World War II. He also served, following his retirement from the Army, for 12 years with the Office of Emergency Preparedness. He was encouraged by Senator Fulbright, in connection with hearings on the origins of the war in Southeast Asia, to write about his experiences. [redacted] submitted an inventory of documents which he had turned over to the Army at the time of his separation from the service, most of which he had originated or which had been addressed to him during his tour in Hanoi. Once he arrived at the Agency for his research (the Office of Public Affairs provided the work space and took care of escort duty), however, he kept asking for additional documents. He did not take notes and submit them for security review but, instead, submitted a list of some 370 OSS documents for declassification. Most of these were subsequently released to him. Later on, we learned from NARS personnel that [redacted] decided to enlarge the scope of his book. He has never submitted a manuscript for review, so presumably nothing has been published. One thing that we learned from our experience with Mr. Patti was that the "care and feeding" of researchers is a burden on our resources.

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2. Marshall L. Miller, who at the time was an Associate Deputy Attorney General, requested access to classified OSS and CIA records filed among the State Department records at the Diplomatic Branch at NARS. He planned to write a two-volume work on U.S. relations with Bulgaria during World War II. Approval was granted, subject to the usual conditions. As far as we know, however, he never exercised his right. We received no notes from NARS for security review and he never submitted a manuscript. It is known that Miller returned to private law practice shortly after his application was approved, and this may have affected his plans.

3. Howard C. Berkowitz, a computer programmer at the Department of Labor, was commissioned by the Ripon Society of the Republican Party to do a study of information control and leaks within the Federal Government. His request for access to classified CIA information was denied. One reason for the disapproval was his connection to a major political party, but the principal reason was our belief that his information needs could be substantially met on an unclassified basis. He subsequently came to the Headquarters Building for briefings/interviews.

4. David C. Walsh, an undergraduate student at Montgomery College, requested access to classified OSS records in connection with his research into special ordnance and similar equipment developed for or by the OSS. Shortly after receiving this request, the Agency's regulations concerning the criteria for considering historical research applications were amended, with the approval of the Information Review Committee, to take into account academic qualifications and evidence of prior scholarly research. The request was denied on that basis.

5. Ray S. Cline, former DDI and former head of State/INR, submitted a request for historical researcher access directly to the DCI. The DCI sent the request to the Chief of the Historical Staff, Walt Elder. Mr. Elder was aware that Agency regulations and practices called for other officials to handle these matters, but, although he asked us to draft the correspondence, Mr. Elder felt obligated to sign the letters. Applications were approved for both Mr. Cline and his research assistant. There was a problem finding work space and someone who would accept responsibility for badging and escort duty. When [] then DDI, learned of Mr. Cline's approval for historical research, he insisted that the work space could not be in Headquarters Building. We never received any notes to review and assumed, therefore, that Mr. Cline had not availed himself of his research privileges. However, we later heard that the research assistant had in fact been given access to classified material in one of the Rosslyn offices. We do not know who, if anyone, reviewed her notes. The whole matter was handled outside established channels.

6. Vance Tiede, a graduate student at Georgetown University, was turned down on his request for access to classified OSS records concerning reported German-Soviet peace feelers, primarily on the basis that he lacked the requisite academic credentials. Mr. Tiede was very persistent, however, and persuaded several persons to submit letters on his behalf (including a letter from Ray Cline). In the end, Mr. Tiede went along with having his informational needs satisfied through an FOIA request.

8. Vice President Nelson Rockefeller wrote to the DCI on 20 September 1976 on behalf of one of his speechwriters, Joseph Persico, asking that Mr. Persico be provided access to classified OSS records. (Mr. Persico had previously filed one or more FOIA requests with the Agency, but he wanted to expedite his research rather than await the results of the FOIA processing.) The request was denied by Director George Bush in a letter dated 8 October 1976. In his letter, Mr. Bush pointed out the difficulties in accommodating historical researchers and the fact that several previous requests of this nature had been denied.

10. So far this year (1979), we have denied requests from two students who wanted permission to view CIA records contained in Department of the Army files. The requesters were Robert C. Morris, Jr., of VMI, and Timothy J. Lomperis of Duke University. In each instance, we recommended that they submit FOIA or mandatory review requests instead.

11. In January 1979, we received a still unanswered request from the former U.S. Ambassador to Panama, William J. Jorden, for historical researcher access to classified CIA records held by the Lyndon B. Johnson Library, where Ambassador Jorden is a Scholar-in-Residence. He submitted similar requests to several other agencies. A meeting was held on the matter with [redacted] (OGC), the Office of Security's Records Management Officer, and Jack Pfeiffer (to whom the letter had been addressed). The Office of Security spokesman stated that OS would no longer insist upon a full field investigation, and that this would thus not be an obstacle to clearing historical researchers. He noted that the application forms did not conform to the Privacy Act and indicated that he would revise them. [redacted] for his part, said that he wanted to revise the security agreement so that it would be more in the form of a contract in case we ever went to court. I subsequently received a new version of the security agreement from [redacted]. I never did get revised application forms from Security, however, despite having inquired about the matter two or three times. To avoid further delay, I drafted a letter to Mr. Jorden, incorporating the Privacy Act statement, and was about to have it typed when [redacted] briefed me on a meeting of the Interagency Information Security Committee. Mr. Jorden's request had come up for discussion at this meeting and several agencies, notably the Department of State, opposed granting it. The Department of State has consistently refused to provide researchers with access to classified materials. They did it once, and it resulted in criticism from other historians. (I can provide more details to anyone who is interested.) [redacted] recommended, therefore, that I hold up on the letter until she was able to get policy guidance. She went on to her new assignment in the Comptroller's office before doing so, and Mr. Jorden's letter remains unanswered.

12. The latest request, from former Agency employee [redacted] was addressed to [redacted] who forwarded it to IPD. [redacted] the DDO Information Review Officer, is aware of it and is basically unsympathetic. In fact, he thinks that the letter itself contains classified information. The letter that I have drafted to be sent to [redacted] is designed to let him know that his request may very well be denied and to encourage him to submit an FOIA request instead. He is not an established scholar (to my knowledge); there would be a problem with providing working space and escort service; and, above all, to approve his application after disapproving so many other requests would smack of favoritism.

13. Policy guidance is sorely needed. If we are not going to approve any of these applications, we should amend our regulations to make that clear. If we are going to approve them, we need to set up facilities to accommodate researchers on a more or less continuous basis.

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